SB CRIMINAL MISC. PETITION NO.587/2000.

Shravan Kumar Vs. The State of Rajasthan.

Date of order:- 17.12.2007

HON'BLE MR. JUSTICE RAGHUVENDRA SINGH RATHORE.

Mr. Rajendra Prasad, for the petitioner.
Mr. Jainendra Jain, Public Prosecutor.

This Criminal Misc. Petition under Section 482 Cr.P.C. has been filed, primarily, for quashing the First Information Report No. 38/1993 lodged before Rajasthan State Investigation Bureau, Jaipur on 5.3.1993. The petitioner has also prayed to declare all actions for initiation sanction and continuance of prosecution of the petitioner in the matter relating to the said First Information Report as malafide, illegal,unconstitutional and void ab-initio.

2. Boardly speaking, the facts of the case are that the petitioner was posted as Junior Engineer, Irrigation Circle, Hanumangarh. Thereafter, he was transferred to Sidhmukh Project Circle, Bhadra vide order dated 14.8.1992. However, the said order was cancelled on 31.8.1992

and accordingly, the petitioner joined his duty on 1.9.1992 in the Office of Assistant Engineer, Pilibanga Section. The petitioner is said to have found certain unauthorized pipe outlets. The Assistant Engineer, Pilibanga had asked the petitioner on 4.9.1992 to remove the said pipe outlets but the cultivators had opposed the removal of the same. The petitioner was then sent for training to Jaipur on 5.9.1992 and he returned to Pilibanga on 15.9.1992. Thereafter, the petitioner reported to XEN Hanumangarh on 26.9.1992. On 26.09.1992, the petitioner was directed to report to AEN Pilibanga.

3. Meanwhile, on 25.9.1992 after receiving the information, the Deputy Superintendent of Police visited the site and found unauthorised pipe outlets. Thereafter, the investigation was made and the relevant record was seized. The police also obtained affidavits from the cultivators. The instant FIR came to be registered on 5.3.1993 against the petitioner and four others, for offence under section 13(1)(d) (2) of the Prevention of

Corruption Act and also for the offence under Section 120-B of the IPC.

4. After investigation, the RSIR sought sanction for prosecution of the petitioner, in respect of the said offences. It is stated that by the petitioner, at the initial stage, the respondent department did not grant sanction of prosecution against the petitioner. However, the respondent had ultimately, issued the sanction against the petitioner on 23.10.1996 (Annexure-16).

5. The petitioner had then preferred a writ petition No.(716/1997) before this Court. However, the said writ petition came to be decided on 5.7.2000 whereby the writ petition was dismissed in the term that a writ petition for quashing the FIR cannot be entertained as the petitioner has alternative remedy under Section 482 Cr.P.C. Thereafter, the petitioner filed an appeal No. (789/2000) against the said order, but the said appeal was subsequently withdrawn.

6. Learned counsel for the petitioner has submitted that the petitioner has not committed any offence and, as such, the first information report has wrongly been lodged against him, which deserves to be quashed and set-aside by this Court. He has further submitted that the petitioner was appointed by the Chief Engineer, Irrigated Area, Duganap, Bikaner vide order dated 21.9.1987. According to the petitioner, the said appointing authority had clearly declined to accord any sanction against the petitioner and informed about it to the Chief Engineer, vide his order dated 13.5.1996 (Annexure-14). He has also submitted that the Chief Engineer (HQ) had also written a letter to the Government on 2.8.1996, not to grant sanction for prosecution of the petitioner (Annexure-15). Learned counsel for the petitioner has submitted that the Chief Engineer (HQ) while reviewing his earlier order, granted sanction on 23.9.1996 (Annexure-16). He has also submitted that in view of the fact that a copy of the sanction order was endorsed to the Deputy secretary, (Irrigation), Government of Rajasthan, goes to show that it was granted at the instance

of the State Government.

7. This Misc. Petition is pending since the year 2000 and was awaiting admission. No notices to the respondents were issued so far. However, the respondent No.1, the State Government was being represented at the time of hearing of the case. Meanwhile, the High Court had ordered to stay the filing of challan, vide order dated 4.9.2005. It is noteworthy that the learned Public Prosecutor had filed an application and made a request for early listing of the case on the ground that the challan is ready but the same could not be filed because of interim order. Therefore, on 23/1/01 it was ordered with the consent of both the parties, to decide the case at the stage of admission on 6/2/01. Since then the petition had been adjourned from time to time. Again on 22.7.2002 the learned Public Prosecutor filed an application for early listing of the case as the charge-sheet in the matter is ready for being filed in the Court.

8. Therefore, so far as the main relief sought by the petitioner for quashing the aforesaid FIR No. (738/93), is concerned, I am of the considered opinion that it would not be just and proper for this Court to interfere at this stage, when the Investigating Agency has come to the conclusion that prima-facie case is made out against the petitioner and the challan is ripe to be filed in the concerning Court. Otherwise it would amount to interference with the statutory power of the police to investigate a matter. Moreover, taking into consideration the first information report as it is, it cannot be said that no cognizable offence is made out against the petitioner. Therefore, quashing of the report, in exercise of inherent jurisdiction by this Court would not be justified.

9. So far as other reliefs sought by the petitioner, to declare all action of the department in respect of sanction relating to the instant FIR as malafide, illegal, unconstitutional and void ab-initio and to quash the same, is not to be

considered by invoking the inherent powers of this Court under Section 482 Cr.P.C. The said actions are not in relation to a matter pending before a Court under the Code of Criminal Procedure and as such no interference is called for by this Court on the ground that any abuse of the process of the Court has been committed. The said reliefs, looking to the nature of grievance, is primarily against the authorities of the State Government for which the petitioner ought to have proceeded in accordance to the relevant law and before the appropriate forum. In any case, the inherent jurisdiction of this Court under Cr.P.C. is not to be exercised to declare the action of the State Government granting sanction for prosecution of the petitioner, to be malafide or unconstitutional and to quash the same. From a bare perusal of section 482 Cr.P.C., it would be evident that the inherent power of the High Court is saved only in a case, where an order has been passed by a Criminal Court which is required to be set aside to secure the ends of justice or where the proceedings pending before a court amounts to abuse of the process of

court.

10. Therefore, in view of the aforesaid reasons, and the fact that the investigation in the matter is already complete, this Court is of the considered opinion that no case for quashing of F.I.R. is made out and the prayer made for the same deserves to be rejected. The other reliefs sought by the petitioner is not within the scope of inherent powers of this Court under Section 482 Cr.P.C.

11. Consequently, this Criminal Misc. Petition is dismissed.

(Raghuvendra S. Rathore)

Bhatt